

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Jason Alan Hertzog, #146837,)	
a/k/a Jason A. Hertzog, Sr., #146837,)	C/A No. 8:05-1995-MBS
)	
Plaintiff,)	
)	
vs.)	
)	OPINION AND ORDER
Tom Fox, Director of J. Reuben Long)	
Detention Center; Joe Johnson, Major and)	
Deputy Director of J. Reuben Long)	
Detention Center; Susan Safford, Captain)	
at J. Reuben Long Detention Center; NFN)	
Hughes, Captain at J. Reuben Long)	
Detention Center; Phillip E. Thompson,)	
Sheriff of Horry County; NFN)	
Cunningham, Lieutenant at J. Reuben)	
Long Detention Center; S.K. Jones,)	
Corporal at J. Reuben Long Detention)	
Center; and Debbie Hipp, LPN at J.)	
Reuben Long Detention Center, in their)	
professional and individual capacities,)	
)	
Defendants.)	

Plaintiff Jason Alan Hertzog currently is detained at the J. Reuben Long Detention Center in Conway, South Carolina. On June 30, 2005, Plaintiff filed a complaint pursuant to 42 U.S.C. § 1983, alleging unconstitutional conditions of confinement.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., the matter was referred to United States Magistrate Judge Bruce H. Hendricks for pretrial handling. The Magistrate Judge issued special interrogatories in which she asked Plaintiff (1) if the within action raised the same claims as Hertzog v. Horry County, C/A No. 8:05-1776-MBS-BHH; and (2) if the answer to the first question is “yes,” whether Plaintiff wished to continue with this case. Plaintiff filed his answers to the special interrogatories on August 3, 2005, indicating that he did not wish to continue with this

case. Accordingly, the Magistrate Judge issued a Report and Recommendation on August 5, 2005 in which she recommended that the case be dismissed without prejudice because Plaintiff's response was the equivalent of a notice of voluntary dismissal. Plaintiff filed no objection to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of objections to the Report, this court is not required to give any explanation for adopting the recommendation. Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

The court concurs in the Report and Recommendation of the Magistrate Judge and incorporates it herein by reference. It appears that the within action is duplicative of Hertzog v. Horry County, C/A No. 8:05-1776-MBS-BHH, and that Plaintiff seeks a voluntary dismissal. Accordingly, the case is dismissed without prejudice pursuant to Rule 41(a), FRCP. Plaintiff is cautioned that the court's final ruling in Hertzog v. Horry County, C/A No. 8:05-1776-MBS-BHH, will be res judicata as to the allegations contained in the complaint in this case.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

October 5, 2005

Columbia, South Carolina

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified that he has the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.